

No. 2318

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United States  
**Circuit Court of Appeals**  
For the Ninth Circuit.

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UNITED STATES OF AMERICA,  
Appellant,  
vs.  
TSURUKICHI NAKAO,  
Appellee.

In the Matter of the Application of TSURUKICHI  
NAKAO for a Writ of Habeas Corpus.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for  
the Territory of Hawaii.

**FILED**

OCT 30 1913



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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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### **Names and Addresses of Attorneys.**

For the Petitioner, TSURUKICHI NAKAO:

J. LIGHTFOOT, Esq., Kapiolani Building,  
Honolulu, Hawaii.

For the Respondent, RICHARD L. HALSEY, Esq.,  
U. S. Immigration Inspector in Charge at  
the Port of Honolulu:

ROBERT W. BRECKONS, Esq., United  
States District Attorney, Honolulu, Hawaii.  
[1\*]

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*In the United States District Court in and for the  
District and Territory of Hawaii.*

No. 60.

In the Matter of the Application of TSURUKICHI  
NAKAO, for a Writ of Habeas Corpus.

#### **Statement [of Clerk U. S. District Court].**

##### **TIME OF COMMENCING SUIT:**

June 21, 1913: Verified petition for writ of *habeas corpus* filed and writ issued to the United States Marshal for the District of Hawaii.

##### **NAMES OF ORIGINAL PARTIES:**

Petitioner: TSURUKICHI NAKAO.

Respondent: RICHARD L. HALSEY, Esq., U.  
S. Inspector of Immigration in charge at the Port of  
Honolulu.

##### **DATES OF FILING OF THE PLEADINGS:**

June 21, 1913: Petition.

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\*Page-number appearing at foot of page of original certified Record.

June 26, 1913: Return of Richard L. Halsey.

June 26, 1913: Motion to Dismiss.

### SERVICE OF PROCESS:

June 21, 1913: Writ issued and delivered to the United States Marshal for the District of Hawaii. Said Writ afterwards returned into Court with the following return by the said United States Marshal, to wit: "Received the within Petition, Order and Writ of *Habeas Corpus*, this 21st day of June, A. D. 1913, and returned as executed, by hand upon Richard L. Halsey, United States Inspector in Charge for the Port of Honolulu, by exhibiting to him the original Petition, Order and Writ of *Habeas Corpus* and [2] handing to and leaving with him a certified copy of same, this 21st day of June, A. D. 1913."

### HEARINGS.

June 26, 1913: Hearing on Motion to Dismiss.

The above hearing was had before the Honorable Sanford B. Dole, Judge of said Court.

### DECISION:

June 26, 1913: Decision Allowing Motion for Discharge and Ordering Petitioner Released from Custody.

### JUDGMENT:

June 27, 1913: Judgment filed and entered.

### PETITION FOR APPEAL:

August 15, 1913: Petition for Appeal filed and order allowing same signed. [3]

United States of America,  
District of Hawaii,—ss.

I, A. E. Murphy, Clerk of the United States Dis-



trict Court for the District of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled suit; the names of the original parties thereto; the several dates when the respective pleadings were filed; and account of the proceedings showing the service of the writ herein and the time when the judgment herein was rendered and the Judge rendering the same, in the Matter of the Application of Tsurukichi Nakao for a Writ of *Habeas Corpus*, Number 60, in the United States District Court for the District of Hawaii.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court this 3d day of September, A. D. 1913.

[Seal]

A. E. MURPHY,

Clerk, United States District Court, District of Hawaii. [4]

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*In the District Court of the United States, in and for the District and Territory of Hawaii.*

In the Matter of the Application of TSURUKICHI NAKAO, for a Writ of Habeas Corpus.

**Petition for a Writ of Habeas Corpus.**

To the Honorable SANFORD B. DOLE, Judge of the District Court of the United States, in and for the District and Territory of Hawaii:

The undersigned, Tsurukichi Nakao, petitioner herein, respectfully shows unto your Honor:

**FIRST.**

That petitioner is a subject of the Empire of Japan.

## SECOND.

That petitioner came to the Hawaiian Islands in the month of November, 1892, aboard the steamer "Miike Maru," and remained in the Hawaiian Islands at Honomu, Hawaii, Heeia, Koolaupoko, Oahu, Ahuimano, Koolaupoko, aforesaid, and at Aiea Oahu, continuously from the said November, 1892, to the month of November, 1908.

## THIRD.

That on or about the month of November, 1908, petitioner received information that petitioner's mother, then residing in Hiroshima Ken, Japan, was extremely ill and not expected to live long, she being afflicted with paralysis; that thereupon your petitioner, being the eldest son of the family, and having already a younger brother named Wajiro Nakao living at Puunene, Island of Maui, felt it his duty to visit Japan for the purpose of comforting his said mother and remaining with her until such time as she should depart this life or become improved in health.

[5]

## FOURTH.

That your petitioner, accordingly, left Hawaii aboard the SS. "America Maru," in the month of November, 1908, intending to return to Hawaii after visiting his mother, and performing his filial duties to her as aforesaid, and petitioner never intended in any manner, to abandon or relinquish his rights to return to Hawaii as a domiciled alien.

## FIFTH.

That when petitioner arrived in Japan, he found that his mother was extremely ill, paralyzed, and in

almost daily expectation of death, and petitioner continued to live with his mother, whose illness was prolonged until the month of September, 1912, when petitioner's mother departed this life.

#### SIXTH.

That as soon as practicable after the death of petitioner's mother, petitioner concluded the business affairs of the family, his father having died many years ago, and returned to Hawaii, reaching the Port of Honolulu aboard the SS. "Siberia," on the 23d day of May, 1913.

#### SEVENTH.

That upon arrival at said Port of Honolulu, your petitioner was found to be afflicted with a disease known as Trachoma, and that after being certified by the medical officers of the United States Public Health and Marine Hospital Service, your petitioner was denied a landing in the Territory of Hawaii, he being allowed, however, to take an appeal to the Secretary of Commerce and Labor from the findings of the Board of Special Inquiry of the Immigration department; that your petitioner was not a domiciled alien, which said appeal, as your petitioner is informed and believes and upon such information and belief alleges and avers, was, by the Secretary of Commerce and Labor overruled. [6]

#### EIGHTH.

That the Board of Special Inquiry, in its finding that petitioner was not a domiciled alien of the United States, committed an error of law by reason of the fact that the evidence adduced before the said Board of Special Inquiry affirmatively show that

petitioner was and is a domiciled alien within the meaning of the laws of the United States.

#### NINTH.

That your petitioner is deprived of his liberty and imprisoned by Richard L. Halsey, Esquire, Immigration Inspector at said Port of Honolulu, as your petitioner is informed and believes, and upon such information and belief alleges and avers, on the grounds that your petitioner is an alien immigrant suffering from a dangerous, contagious disease, to wit, *Trachoma*, and your petitioner is further informed and believes and upon such information and belief alleges and avers, that it is the intention of said Richard L. Halsey, Esquire, to deport your petitioner to the Empire of Japan, by the first steamer leaving the Port of Honolulu for said Empire.

#### TENTH.

That the imprisonment and restraint aforesaid is illegal in this, that your petitioner is a domiciled alien who established his domicile in the United States of America by a residence of about sixteen years in the Hawaiian Islands, and that he never relinquished or gave up his rights as such domiciled alien, and is not an immigrant alien of an excluded class under the laws of the United States of America.

WHEREFORE, to be relieved of such unlawful detention, imprisonment and confinement as aforesaid, petitioner prays that a writ of *habeas corpus* issued out of this Honorable Court directed to said Richard L. Halsey, Esquire, Inspector as aforesaid, so that your petitioner may be brought before this Honorable Court to do, [7] submit to and receive

what the law may direct.

Dated, Honolulu, June 19th, A. D. 1913.

(Sgd.) In Japanese (TSURUKICHI NAKAO.)

United States of America,

Territory of Hawaii,—ss.

Tsurukichi Nakao, being first duly sworn, on oath deposes and says, that he is the petitioner named in the foregoing petition subscribed by him; that he has read the same and knows the contents thereof, and that the statements therein contained are true as he verily believes.

(Sgd.) In Japanese (TSURUKICHI NAKAO).

Subscribed and sworn to by the said Tsurukichi Nakao before me, and by me subscribed, on this 19th day of June, A. D. 1913.

[Seal] (Sgd.) B. N. KAHALEPUNA,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

Let the writ issue as prayed for returnable before me on the 20th day of June, 1913, at the hour of 2 o'clock P. M.

(Sgd.) S. B. DOLE,  
Judge United States District Court, Territory of  
Hawaii.



*In the District Court of the United States, in and for  
the District and Territory of Hawaii.*

In the Matter of the Application of TSURUKICHI  
NAKAO, for a Writ of Habeas Corpus.

**Writ of Habeas Corpus.**

The United States of America, to RICHARD L.  
HALSEY, Esq., United States Immigration In-  
spector, at the Port of Honolulu, Territory of  
Hawaii.

We command you that the body of Tsurukichi  
Nakao, in your custody detained, as it is said, to-  
gether with the day and cause of his caption and de-  
tention, you safely have before the Honorable San-  
ford B. Dole, Judge of our District Court of the  
United States, in and [8] for the District and  
Territory of Hawaii, on Thursday, the 26th day of  
June, A. D. 1913, at the hour of 2 o'clock P. M. of  
said day, to do and receive all and singular those  
things which said Judge shall then and there con-  
sider of him in this behalf; and have you then and  
there this Writ.

Witness the Honorable SANFORD B. DOLE,  
Judge of the District Court of the United States, in  
and for the District and Territory of Hawaii, this  
19th day of June, A. D. 1913.

[Seal]

A. E. MURPHY,

Clerk.

By (Sgd.) Wm. L. Rosa,

Deputy Clerk.

MARSHAL'S RETURN.

Received the within Petition, Order and Writ of *Habeas Corpus*, this 21st day of June, A. D. 1913, and returned as executed, by hand, upon Richard L. Halsey, United States Inspector in Charge for the Port of Honolulu, by exhibiting to him the original Petition, Order and Writ of *Habeas Corpus* and handing to and leaving with him a certified copy of same, this 21st day of June, A. D. 1913.

W. R. HENDRY,

By (Sgd.) D. K. Sherwood,

Office Deputy.

Dated, Honolulu, T. H., June 23, 1913.

[Endorsed]: No. 60. (Title of Court and Cause.)  
Petition, Writ and Order. Filed Jun. 21, 1913. A.  
E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy  
Clerk. [9]

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**[Order Allowing Motion for Discharge and Directing  
Relief of Petitioner from Custody, etc.]**

From the Minutes of the United States District  
Court, Vol. 8, Page 566, Thursday, June 26,  
1913.

[Title of Court and Cause.]

On this day came the above petitioner in person and with his counsel, Mr. J. Lightfoot, and also came the respondent, Richard L. Halsey, in person, and with Mr. C. C. Bitting, Assistant United States District Attorney, and this cause was called for hearing. Thereupon due argument having been heard upon motion for discharge herein, the said motion was by

the Court allowed and the petitioner herein ordered released from custody, whereupon Mr. Bitting having given notice of appeal herein, it was by the Court ordered that said petitioner furnish recognizance herein in the sum of \$500.00 pending said appeal.

[10]

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**[Return of U. S. Immigration Inspector to Writ of Habeas Corpus.]**

*In the United States District Court for the Territory of Hawaii.*

In the Matter of the Application of TSURUKICHI NAKAO for a Writ of Habeas Corpus.

RETURN OF RICHARD L. HALSEY, UNITED STATES IMMIGRATION INSPECTOR, AT THE PORT OF HONOLULU, TERRITORY OF HAWAII, TO THE WRIT OF HABEAS CORPUS ISSUED IN THE ABOVE-ENTITLED MATTER.

Comes now the respondent, Richard L. Halsey, and in obedience to the Writ of *Habeas Corpus* in this cause issued, now here presents the body of the said Tsurukichi Nakao as by said writ he is commanded to do.

And by way of return to the said writ your respondent admits that petitioner is a subject of the Empire of Japan, and also that upon arrival at the port of Honolulu the petitioner was found to be afflicted with a disease known as Trachoma, a dangerous, contagious disease.

That respondent has no knowledge or information as to the alleged facts contained in paragraphs sea



ond, third, fourth and fifth, and leaves the petitioner to his proof thereon if the same are material to the issues in this case, but respondent does admit that the petitioner reached the port of Honolulu aboard the Steamship "Siberia" on the 23d day of May, A. D. 1913.

Respondent further shows that petitioner was denied a landing in the Territory of Hawaii and at the port of Honolulu by the Board of Special Inquiry of the Immigration Department of the United States, located at said Port of Honolulu, and that an appeal to the Secretary of Labor was taken by the petitioner from such finding and determination by the said Board of Special Inquiry, and that the findings of the Board of Special Inquiry were conclusions of fact and not an error of law as alleged by petitioner in paragraph [11] eighth of his said petition.

Your respondent denies that petitioner is a domiciled alien who has established his domicile in the United States of America, and says that if ever such alien did acquire or had acquired a residence and domicile in the United States of America he abandoned the same by a continuous and uninterrupted residence for five years in the Empire of Japan, where or about said period or time he lived and resided, cultivating his own land and living upon his own home, and in every way living and acting as a resident in said Empire of Japan, as is more particularly and fully shown by the testimony given by said applicant under oath before the Board of Special Inquiry convened upon his *applicant* at said port of Honolulu, on May 29, 1913, and a copy of which said

testimony, together with the findings of the Board of Special Inquiry thereon, and the confirmation by the Secretary of Labor of said findings, are attached hereto and made a part hereof as fully as if set out in words and figures herein.

That the hearing before said Board of Special Inquiry was fair, full and impartial, and that the findings of said Board of Special Inquiry having been confirmed and approved by the Secretary of Labor upon the appeal of the petitioner, the said proceedings denying petitioner the right to enter the United States have become final and conclusive, and that this Court is without jurisdiction in the premises.

(Sgd.) RICHARD L. HALSEY,  
United States Immigration Inspector at the Port of  
Honolulu.

United States of America,  
Territory of Hawaii,—ss.

Richard L. Halsey, being first duly sworn according to law, deposes and says that he is the Richard L. Halsey who has made the return to the writ of *habeas corpus* in the above-entitled cause; that he has read the said return and knows the contents thereof, and [12] that the facts therein stated are true.

(Sgd.) RICHARD L. HALSEY.

Subscribed and sworn to before me this 26th day of  
June, A. D. 1913.

[Seal] (Sgd.) WM. L. ROSA,  
Deputy Clerk, United States District Court, Ter-  
ritory of Hawaii.

**Medical Certificate.**

Port of Honolulu, T. H.,

Date, May 28, 1913.

Name—TSURUKICHI NAKAO.

Age—45, Sex, M.

Native of Japan. Race, Japanese. Date arrival,  
May 26, 1913, S. S. Siberia.

Class—Manifest No. K—1—28

THIS IS TO CERTIFY that the above-described person has this day been examined and is found to be afflicted with trachoma, a dangerous, contagious disease, which in my opinion cannot be cured in 60 days.

(Signed) F. E. TROTTER, Surgeon,  
Public Health and Marine Hospital Service.

**[Record of Board of Special Inquiry, May 29, 1913.]**

U. S. IMMIGRATION SERVICE,

Port of Honolulu, T. H.

Record of Board of Special Inquiry, convened May 29, 1913.

Members of Board: Harry B. Brown, Edwin Farmer, and Merlen J. Moore.

Case of TSURUKICHI NAKAO, KI 28, Ex. S.S. SIBERIA. May 26, 1913.

Interpreter, Katsunuma.

Applicant, sworn by Inspector Farmer, testifies:

Q. What is your name and age?

A. Tsurukichi Nakao. 45 years old.

Q. Is any person travelling with you? A. No.

Q. Where were you born?

A. At Yagi Mura, Hiroshima Ken, Japan.

Q. Where have you been living?

A. At Yagi Mura—the same place where I was born. [13]

Q. Are you married or single?

A. Married. My wife, Chiye, 24 years old, is in Japan.

Q. When were you married?

A. Three years ago, in Japan.

Q. Have you any children?

A. No; I had one boy, but he is dead.

Q. Were you ever married before? A. No.

Q. Can you read and write? A. No.

Q. On which ship did you arrive, and from what port? A. On the S.S. "Siberia," from Kobe.

Q. Who paid your passage? A. Myself.

Q. What is your occupation? A. Farmer.

Q. Where is your farm?

A. At Yagi Mura, Japan.

Q. How long have you been a farmer?

A. About five years.

Q. Were you ever in the United States before?

A. Yes.

Q. When and where?

A. I was in Hawaii for 16 years and returned to Japan in 1908.

Q. What did you do while you were in Hawaii?

A. Plantation work.

Q. Where did you live in Hawaii?

A. At Honomou, Hawaii, first. Then I went to Heeia, Oahu. I then worked two years for Mr. Macfarlane, as a dairyman, at Ahuimanu. Then I moved to Aiea Plantation, Oahu, and returned to Japan from Aiea.

Q. To whom are you going?

A. I am intending to go to Aiea this time.

Q. To any person?

A. To the plantation only.

Q. Have you promise of work on the plantation?

A. The boss told me that if I would come back he would give me a job again.

Q. Was that before you went away?

A. Yes; that was before I left Hawaii in 1908.

Q. Have you notified any one of your arrival?

A. No.

Q. How much money have you?      A. \$7.00.

Q. Was your wife ever in Hawaii?      A. No.

Q. When you left Hawaii, was it your intention to come back?      A. I intended to come back again.

Q. Did you intend to come back soon, or at any particular time, or did you simply intend to come back some time?

A. I intended to come back sooner, but my mother was sick, and so I could not come.

Q. How soon did you intend to come back?

A. Right away.

Q. Within a year, or sooner, or longer?

A. I intended to come back in about one year.

Q. Was your mother sick before you went to Japan, or was she taken sick after you got there?

A. I received notice that she was sick, and so I went to Japan.

Q. How long was your mother sick?

A. Until September last year, when she died.

Q. So, she was sick four years, was she?

A. Yes; she was paralyzed.

Q. If she had been sick ten years would you have stayed there until she was cured or until she died?    A. Yes.

Q. If her sickness had continued for 20 years, would you have stayed there?

A. Yes; I would have stayed with her.

Q. Then, the fact of your coming back to Hawaii was dependent on the duration of your mother's sickness, was it?    A. Yes.

Q. Do you know how long a person afflicted with paralysis may live?

A. You cannot tell. Sometimes the second attack kills them right away. But I could not tell.

Q. Did you not know that it might be possible for one paralyzed to live many years?

A. Yes, I knew it.

Q. Then, your return to Hawaii was dependent on a very uncertain event?    A. It was.

Q. Is your father living?    A. No.

Q. When did he die?

A. When I was 12 years old. [14]

Q. Who is the oldest son in your family?

A. I am.

Q. Then when your father died, you succeeded to his property, did you?

A. Yes, I did; when I became of age.

Q. Have you still the property you received from your father?

A. I have sold it now, and deposited the money with my wife's elder brother.

A. When did you sell it?

A. In January of this year.

Q. How much land was there?



A. 1200 yen, or \$600.00.

Q. That was the value; but how many acres were there?

A. About half an acre; and there is a house on it.

Q. Is that the farm you spoke of at first?

A. That was part of it, and besides that I leased about an acre and a half.

Q. Have you been working that land ever since you went to Japan?      A. Yes.

Q. Then, as I understand it, you left Hawaii, went to Japan about five years ago, and have pursued a regular occupation, living there with your family, intending however, to return to Hawaii sometime, in case your mother should die or should get well?

A. Yes.

Q. Have you any further statement to make?

A. I would like to be landed.

(Japanese Characters.)

Subscribed and sworn to before me, this 29th day of May, 1913.

(Sgd.) EDWIN FARMER,  
Immigration Inspector.

The foregoing testimony has been translated by me to the affiant named herein, and before signing the same he acknowledged it to be a correct record and fully understood by him.

(Sgd.) TOMIZO KATSUNUMA.

Interpreter.

Applicant is certified by the examining surgeon of the U. S. P. H. S. as being afflicted with TRACHOMA, a dangerous, contagious disease.

EDWIN FARMER.—I move that applicant be

denied admission and returned to Japan, this decision being based on the certificate of the examining surgeon that he is afflicted with TRACHOMA, a dangerous, contagious disease.

MERLEN J. MOORE.—I second the motion.

HARRY B. BROWN.—It is so ordered.

EDWIN FARMER.—I am of the opinion that this applicant never acquired a domicile in Hawaii, as he retained his property in Japan all the time he was in Hawaii. However, he might possibly say that he did not dispose of it because his mother was living. But, as he has, for the past five years lived in Japan, with his family, pursuing his regular occupation, intending some time to return to Hawaii, his return depending on an indefinite and uncertain event, he has relinquished his domicile in Hawaii, if he ever had one, and I move that this be the opinion of the Board.

MERLEN J. MOORE.—I am of the same opinion.

HARRY B. BROWN.—I also concur.

HARRY B. BROWN.—(To Applicant.) You have been denied admission to the United States on account of being certified by the examining surgeon of the U. S. P. H. S. as being afflicted with TRACHOMA; a dangerous, contagious disease. From this decision there is no appeal, but you may appeal to the Secretary of Labor at Washington on the question of domicile, if you desire to do so. It is the opinion of the Board that you have relinquished your domicile in Hawaii, if you ever acquired one here. You have 48 hours in which to decide whether or not you will appeal. Do you want to appeal now, *do*



want time to consider, or is it your desire to waive your right [15] of appeal?

A. I am going to appeal.

Q. Do you want an attorney?

A. I will appeal without a lawyer.

HARRY B. BROWN.—(To Applicant.) If your appeal is dismissed you will be returned to Japan at the expense of the steamship company which brought you to Hawaii.

(Sgd.) HARRY B. BROWN,

(Sgd.) EDWIN FARMER,

(Sgd.) MERLEN J. MOORE,

Board of Special Inquiry.

CABLEGRAM.

The following cablegram received "VIA COMMERCIAL PACIFIC."

Received S. 35 AM      BDN      Jun. 18, 1913.  
16 USG. WASHINGTON, DC.

IMMIGRATION HONOLULU.

DEDICANT TSURUKICHI NAKAO AND TO-  
TARO FUJIMOTO

CAMINETTI.

(DEDICANT:—Secretary has affirmed excluding decision board and directs deportation.)

Bureau Circular No. 17, May 1, 1913.

[Endorsed]: No. 60. (Title of Court and Cause.)

Return of Richard L. Halsey. Filed Jun. 26, 1913.

A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa,  
Deputy. [16]

*In the District Court of the United States, in and for  
the District and Territory of Hawaii.*

In the Matter of the Application of TSURUKICHI  
NAKAO, for a Writ of Habeas Corpus.

**Motion to Dismiss.**

Now comes Tsurukichi Nakao, by his attorney, J. Lightfoot, and moves this Honorable Court for an order herein discharging the above-named petitioner from custody on the ground that the return filed herein, by Richard L. Halsey, Esquire, does not show any lawful ground for the continued imprisonment, restraint and confinement of said petitioner.

This motion is based on the record in the above-entitled Court and cause.

Dated, Honolulu, June 26th, A. D. 1913.

(Sgd.) J. LIGHTFOOT,  
Attorney for Petitioner.

[Endorsed]: No. 60. (Title of Court and Cause.)  
Motion to Dismiss. Filed Jun. 26, 1913. A. E.  
Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy  
Clerk. [17]

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*In the District Court of the United States, in and for  
the District and Territory of Hawaii.*

In the Matter of the Application of TSURUKICHI  
NAKAO for a Writ of Habeas Corpus.

**Judgment.**

At the regular April A. D. 1913 Term of the District Court of the United States, for the District and Territory of Hawaii, held in the courtroom of said

court, in the city of Honolulu, District and Territory aforesaid, on Thursday the 26th day of June, A. D. 1913, the above-entitled cause having been heard on the pleadings and arguments of counsel for the respective parties, and due deliberation had thereon, the Court finds that the above-named petitioner, Tsurukichi Nakao, is entitled to be discharged, subject to the taking of an appeal, in which case he may be released upon giving a recognizance with sureties in the sum of Five Hundred Dollars (\$500.00) to answer the judgment of the appellate court.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that the above-named petitioner, Tsurukichi Nakao, be, and he is hereby discharged from custody herein, subject to the taking of an appeal.

And the Court being advised that the above-entitled action will be removed to the Appellate Court by proper proceedings to be had in that behalf.

It is hereby further ordered, adjudged and decreed that the above-named petitioner, Tsurukichi Nakao, give his recognizance with surety in the sum and amount of Five Hundred Dollars to answer the [18] Judgment of the Appellate Court; and that upon the giving of such recognizance, the said petitioner, Tsurukichi Nakao, be released from custody.

Given, made and dated at Honolulu, Territory of Hawaii, this 27th day of June, A. D. 1913.

(Sgd.) S. B. DOLE,  
Judge.

O. K.—(Sgd.) C. C. BITTING,  
Asst. U. S. Attorney.

[Endorsed]: No. 60. (Title of Court and Cause.) Judgment. Entered in J. D., Book 2, at page 426. Filed June 27th, 1913. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [19]

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*In the District Court of the United States, in and for the District and Territory of Hawaii.*

In the Matter of the Application of TSURUKICHI NAKAO for a Writ of Habeas Corpus.

**Recognizance.**

The United States of America,  
Territory and District of Hawaii,—ss.

Be it remembered, that on the 30th day of June, A. D. 1913, before me, Foster L. Davis, Deputy Clerk of the District Court of the United States within and for the Territory and District of Hawaii, duly appointed by said Court and duly qualified and acting as such deputy clerk, personally came Tsurukichi Nakao, as principal, and S. Deai and K. Oki, as sureties, and jointly and severally acknowledge themselves to owe the United States of America the sum of Five Hundred Dollars (\$500.00), to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to wit:

THE CONDITION OF THIS RECOGNIZANCE is such, that whereas, by the judgment of the above-entitled court in the above-entitled action dated June 26th, 1913, the above-named Tsurukichi Nakao was ordered discharged from custody, subject to the taking of an appeal; and

WHEREAS, said Court, being advised that the

above-entitled action will be removed to the Appellate Court by proper proceedings in that behalf, further ordered that said Tsurukichi Nakao give his recognizance with surety in the sum and amount of Five Hundred Dollars (\$500.00) to answer the judgment of the Appellate Court, and that, upon the giving of such recognizance, said Tsurukichi [20] Nakao shall answer, abide by and render himself in execution of, and obey, all orders and judgment of the Appellate Court herein, whether that Appellate Court be the United States Circuit Court of Appeals for the Ninth Circuit or the Supreme Court of the United States, and in all respects subject himself to whatever action may be taken in or by such Appellate Court, then this recognizance to be void; otherwise to remain in full force, virtue and effect.

Witness to signature in Japanese:

(Sgd.) In Japanese,  
Principal.

(Sgd.) F. K. MAKINO.

(Sgd.) S. DEAI, Surety.

(Sgd.) K. OKI, Surety.

Taken and acknowledged before me the day and year first above written.

[Seal] (Sgd.) F. L. DAVIS,  
Deputy Clerk, United States District Court.

United States of America,  
Territory and District of Hawaii,—ss.

S. Deai and K. Oki, parties to the above bond, being duly sworn, do depose and say, each for himself, that he is worth the sum of Five Hundred Dollars (\$500.00) over and above his just debts, liabilities

and exemptions, and that his property is situate in said Territory and subject to execution.

(Sgd.) S. DEAL.

(Sgd.) K. OKI.

Subscribed in my presence and sworn to before me this 27th day of June, A. D. 1913.

[Seal] (Sgd.) F. L. DAVIS.

Deputy Clerk, United States District Court.

Approved as to form and as to sufficiency of sureties.

(Sgd.) C. C. BITTING,

Assistant United States District Attorney.

Approved: (Sgd.) S. B. DOLE,

Judge. [21]

[Endorsed]: No. 60. (Title of Court and Cause.)  
Recognizance. Filed Jun. 30, 1913. A. E. Murphy,  
Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [22]

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*In the United States District Court for the Territory  
of Hawaii.*

In the Matter of the Application of TSURUKICHI  
NAKAO for a Writ of Habeas Corpus.

**Petition for Appeal.**

To the Honorable SANFORD B. DOLE, Judge of  
the Above-entitled Court:

THE UNITED STATES OF AMERICA, by its attorney, C. C. BITTING, conceiving itself aggrieved by the order and judgment made and entered on the 27th day of June, A. D. 1913, in the above-entitled proceeding, does hereby appeal from the said order and judgment to the Circuit Court of Ap-



peals for the Ninth Circuit, and files herewith its assignment of errors intended to be urged upon appeal, and it prays that its appeal may be allowed, and that a transcript of the record of all proceedings and papers upon which said order and judgment was made, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit of the United States.

Dated this 15th day of August, A. D. 1913.

(Sgd.) C. C. BITTING,

Assistant United States Attorney.

Received a copy of the above petition.

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By his Attorney,

[23]

[Endorsed]: No. 60. (Title of Court and Cause.)  
Citation on Appeal. Filed Aug. 15, 1913. A. E.  
Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy  
Clerk. [24]

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*In the United States District Court for the Territory  
of Hawaii.*

In the Matter of the Application of TSURUKICHI  
NAKAO for a Writ of Habeas Corpus.

**Order Allowing Appeal.**

Upon application and motion of C. C. BITTING,  
Assistant United States Attorney for the Territory  
of Hawaii:

IT IS HEREBY ORDERED that the petition  
for appeal heretofore filed herein by the United  
States of America be, and the same is hereby granted;

and that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final order and judgment heretofore, on June 27th, 1913, filed and entered herein, be and the same is hereby allowed, and that a transcript of the record of all proceedings and papers upon which said final order and judgment was made, duly certified and authenticated, be transmitted, under the hand and seal of the Clerk of this Court, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States, at San Francisco, in the State of California.

Dated this 15th day of August, A. D. 1913.

(Sgd.) S. B. DOLE,

Judge U. S. District Court.

Received a copy of the above order.

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By his Attorney:

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[25]

[Endorsed]: No. 60. (Title of Court and Cause.)  
Order Allowing Appeal. Filed Aug. 15, 1913. A. E.  
Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy  
Clerk. [26]

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*In the United States District Court for the Territory  
of Hawaii.*

In the Matter of the Application of TSURUKICHI  
NAKAO for a Writ of Habeas Corpus.

**Assignment of Errors.**

And now comes the United States of America, by  
C. C. BITTING, its attorney, and says that in the



record and proceedings in the above-entitled matter there is a manifest error, and that the final record and judgment, made and entered in said matter on the 27th day of June, A. D. 1913, is erroneous and against the just rights of the said United States, in this, to wit:

First. That the Court erred in granting the writ of *habeas corpus* herein.

Second. That from the issuing made by the petitioner, it appeared that the proceedings were final before the immigration authorities, and that this Court had no jurisdiction in the matter.

Third. That it appeared from the petition that the applicant was afflicted with a dangerous, contagious disease, and on account thereof was not entitled to enter the United States of America through the port of Honolulu, or any other port in said United States of America.

Fourth. That it appeared from the face of the petition itself, that the immigration authorities of the United States of America offered to permit the applicant to obtain hospital treatment and which offer was by the petitioner refused, and if upon no other ground, the immigration authorities were right in refusing the [27] petitioner an entrance, and the Court erred in entertaining or issuing a writ of *habeas corpus*.

Fifth. That it appears upon the face of the petition that for about five years the alien applicant had been living in the country of his nativity, to wit, in the Empire of Japan, subject to the jurisdiction thereof, living upon and cultivating his own land and

pursuing the regular occupation of a resident and citizen of said Empire of Japan, and had abandoned his domicile, if any such was ever acquired, within the Territory of Hawaii and the jurisdiction of the Court.

Sixth. The Court erred in sustaining the petition for the writ of *habeas corpus* in allowing said writ, and in ordering the discharge of the applicant under said writ, and his entrance into the United States of America through the port of Honolulu, Territory of Hawaii, and within the jurisdiction of the Court.

Seventh. And for other and manifest errors apparent upon the record in the above-entitled cause and too numerous to be set out herein.

Dated this 15th day of August, A. D. 1913.

(Sgd.) C. C. BITTING,

Assistant United States Attorney.

Received a copy of the above assignment of errors.

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By his Attorney,

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[Endorsed]: No. 60. (Title of Court and Cause.)  
Assignment of Errors. Filed Aug. 15, 1913. A. E.  
Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy  
Clerk. [28]

*In the United States District Court for the Territory  
of Hawaii.*

In the Matter of the Application of TSURUKICHI  
NAKAO for a Writ of Habeas Corpus.

**Citation on Appeal.**

United States of America,—ss.

The President of the United States, to Tsurukichi  
Nakao, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an order allowing an appeal, filed in the Clerk's office of the United States District Court for the Territory of Hawaii, wherein the United States of America is appellant, and you, Tsurukichi Nakao, are appellee, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf. [29]

Witness the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 15th day of August, A. D. 1913, and of the Independence of the United States the one hundred and thirty-eighth.

S. B. DOLE,

Judge U. S. District Court, District of Hawaii.

[Seal]

Attest: A. E. MURPHY,

Clerk U. S. District Court.

Received a copy of within citation.

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By his Attorney,

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[Endorsed]: No. 60. (Title of Court and Cause.)  
Citation on Appeal. Filed August 15, 1913. A. E.  
Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy  
Clerk. [30]

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*In the United States District Court for the Territory  
of Hawaii.*

In the Matter of the Application of TSURUKICHI  
NAKAO for a Writ of Habeas Corpus.

**Praeceptum for Transcript.**

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record  
in this cause, to be filed in the office of the Clerk of  
the United States Circuit Court of Appeals for the  
Ninth Judicial Circuit, and include in said transcript  
the following pleadings, proceedings and papers on  
file, to wit:

1. Petition for writ of *habeas corpus* and writ,  
filed June 21, 1913.
2. Return of Richard L. Halsey, filed June 26,  
1913.
3. Motion to dismiss, filed June 26, 1913.
4. Judgment, filed June 27, 1913.
5. Recognizance, filed June 30, 1913.
6. Petition for appeal, filed \_\_\_\_\_, 1913.
7. Assignment of errors, filed \_\_\_\_\_.
8. Order allowing appeal, filed \_\_\_\_\_.

9. Citation, filed ———.
10. All minute entries in above-entitled cause.
11. This praecipe. [31]

Said transcript to be prepared as required by law and the rules of this Court, and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the Clerk of said Circuit Court of Appeals at San Francisco, before the 15th day of September, A. D. 1913.

THE UNITED STATES OF AMERICA.

By (Sgd.) C. C. BITTING,  
Assistant United States Attorney.

[Endorsed]: No. 60. (Title of Court and Cause.)  
Praecipe for Transcript. Filed Aug. 8, 1913. A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [32]

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**[Certificate of Clerk U. S. District Court to  
Transcript of Record, etc.]**

*In the United States District Court in and for the  
District and Territory of Hawaii.*

No. 60.

In the Matter of the Application of TSURUKICHI  
NAKAO for a Writ of Habeas Corpus.

United States of America,  
District of Hawaii,—ss.

I, A. E. Murphy, Clerk of the District Court of the United States for the District of Hawaii, do hereby certify that the foregoing pages, numbered from 1 to 33, inclusive are a true and complete tran-

script of the record and proceedings had in said court in the matter of the Petition of Tsurukichi Nakao for a Writ of *Habeas Corpus*, as the same remains of record and on file in my office, and I further certify that I hereunto annex the original citation on appeal in said cause.

I further certify that the cost of the foregoing transcript of record is \$9.20, and that said amount has been charged by me in my account against the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 3d day of September, A. D. 1913.

[Seal] A. E. MURPHY,  
Clerk, United States District Court, Territory of  
Hawaii. [33]

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[Endorsed]: No. 2318. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Tsurukichi Nakao, Appellee. In the Matter of the Application of Tsurukichi Nakao for a Writ of *Habeas Corpus*. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Hawaii.

Received and filed September 15, 1913.

FRANK D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.



No. 2318.

8

IN THE

**UNITED STATES CIRCUIT COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

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UNITED STATES OF AMERICA,  
*Appellant,*

VS.

TSURUKICHI NAKAO,  
*Appellee.*

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**IN THE MATTER OF THE APPLICATION OF  
TSURUKICHI NAKAO FOR A WRIT OF HABEAS  
CORPUS.**

**BRIEF OF APPELLANT**

**Upon Appeal from the United States District Court for  
the Territory of Hawaii.**

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**STATEMENT OF THE CASE.**

This is an appeal on the part of the government from a judgment of the District Court of the United States in and for the District of Hawaii discharging upon a writ of *habeas corpus* the said Tsurukichi Nakao. The District Court of Hawaii evidently determined the case upon the pleadings.

The petition for the writ sets forth that the petitioner was a subject of the Emperor of Japan; that he came to the Hawaiian Islands in November, 1892, and remained there until November, 1908; that he returned to Japan upon receiving word that his mother was ill and afflicted with paralysis and being the eldest son of the family, felt it his duty to remain with his mother for the purpose of comforting her as long as she lived or until she should be improved in health, and that he returned solely for the purpose of comforting his mother and performing his filial duties; that at the time he left he never intended to abandon or relinquish his rights to return to Hawaii as a domiciled alien; that when he reached Japan he found his mother extremely ill and that her illness continued until the time of her death which occurred in September, 1912; that as soon as practicable after the death of his mother he returned to Honolulu and arrived there on the 23rd day of May, 1913; that upon his arrival at the port of Hawaii, the medical officers of the United States Public Health and Marine Hospital Service found that he was afflicted with the disease known as trachoma and he was thereupon denied a landing in the Territory of Hawaii; that the Board of Special Inquiry found that he was not a domiciled alien; that he took an appeal from the decision of the Board of Special Inquiry that he was not a domiciled alien to the Secretary of Labor, which appeal was overruled; that the Board of Special Inquiry committed an error of law by reason of the fact that the evidence adduced before the Board



of Special Inquiry affirmatively showed that the petitioner was a domiciled alien within the meaning of the laws of the United States. He further alleges that Richard L. Halsey, Immigration Inspector at the port of Honolulu, intends to deport the said Tsurukichi Nakao on the ground that he is an alien immigrant suffering from a dangerous, contagious disease, to wit, trachoma, and alleges that he is imprisoned and restrained of his liberty illegally in that he is a domiciled alien whose domicile was in the United States, established by a residence of about sixteen years in the Hawaiian Islands and that he never relinquished his domicile and therefore does not come within the excluded classes.

The return of the Immigration Inspector sets forth that the petitioner is a subject of the Empire of Japan and upon his arrival in Honolulu was found to be afflicted with the disease known as trachoma, which is a dangerous, contagious disease; puts the petitioner to his proof on all questions as to residence prior to his coming to Honolulu on the 23rd day of May, 1913, but admits his arrival at the port of Honolulu on that day; alleges that the findings of the Board of Special Inquiry and the Secretary of Labor were conclusions of fact and not conclusions of law and denies that the petitioner is a domiciled alien who has established his domicile in the United States and that if he did acquire a residence and domicile in the United States, he abandoned the same by reason of his continuous and uninterrupted residence for five years in the Empire of Japan; and relies upon

the proceedings before the Board of Special Inquiry which are attached to the return of the Immigration Inspector. This record contains the medical certificate of the doctor to the effect that the said Tsùrukichi Nakao has been examined and found to be afflicted with trachoma, a dangerous, contagious disease, which in the opinion of the surgeon cannot be cured within sixty days, and has also attached the record of the testimony and the warrants of the Board of Special Inquiry upon the evidence excluding the alien; also the warrant of the Secretary of Labor as shown by a telegram from the Commissioner General of Immigration. Upon this record attorney for petitioner made a motion to dismiss, whereupon the Court entered the order discharging the petitioner.

### THE LAW OF THE CASE.

The respondent contends that the order of the Court below discharging the petitioner on a writ of *habeas corpus* should be reversed and the petitioner remanded to the custody of the immigration authorities for deportation, on two grounds:

FIRST: THAT THE COURT HAD NO JURISDICTION TO ENTERTAIN THE PETITION UNDER THE ALLEGATIONS OF THE PETITION AND THE EVIDENCE PRESENTED.

SECOND: THAT UPON THE EVIDENCE PRESENTED TO THE BOARD OF SPECIAL INQUIRY ITS ORDER EXCLUDING THE ALIEN FROM ADMISSION TO THE UNITED STATES WAS PROPER.

Under the first heading it will be observed that

there is no allegation in the petition alleging the setting forth of a denial of a fair hearing to the petitioner on the part of the Board of Special Inquiry or the Secretary of Labor. Such being the case, the matter is governed by the decision of the *United States vs. Ju Toy*, 198 U. S. 253, 40 L. Ed. 1040.

"We assume in what we have to say, as the questions assume, that no abuse of authority of any kind is alleged. That being out of the case, the first of them is answered by the case of *United State vs. SingTuck*, 194 U. S. 161, 48 L. Ed. 917, 921, 24 Sup. Ct. Rep. 621: 'A petition for *habeas corpus* ought not to be entertained unless the Court is satisfied that the petitioner can make out at least a *prima facie* case.' This petition should have been denied on this ground, irrespective of what more we have to say, because it alleged nothing except citizenship. It disclosed neither abuse of authority nor the existence of evidence not laid before the Secretary. It did not even set forth that evidence, or allege its effect."

The finding of the Secretary of Labor that the alien is not domiciled in the United States is conclusive upon the alien.

*United States vs. Ju Toy*, 198 U. S. 1043;  
*United States vs. Sing Tuck*, 194 U. S. 168, 48  
 L. Ed. 917;  
*United States vs. Chin Low*, 208 U. S. 8, 52 L.  
 Ed. 369;  
*Ecker vs. United States*, 142 U. S. 651;  
*How Moy vs. North*, 183 Fed. 89.

The basis for jurisdiction for the issuance of a writ of *habeas corpus* by the District Court is based entirely upon the question as to whether or not the alien has been given a fair hearing by the immigration authorities.

*United States vs. Chin Yow, supra.*

"Of course, if the writ is granted, the first issue to be tried is the truth of the allegations last mentioned. If the petitioner was not denied a fair opportunity to produce the evidence that he desired, or a fair though summary hearing the case can proceed no further. Those facts are the foundation of the jurisdiction of the District Court, if it has any jurisdiction at all. It must not be supposed that the mere allegation of the facts opens the merits of the case, whether those facts are proved or not. And, by way of caution, we may add that jurisdiction would not be established simply by proving that the commissioner and the Department of Commerce and Labor did not accept certain sworn statements as true, even though no contrary or impeaching testimony was adduced. \* \* \*

"We recur in closing to the caution stated at the beginning, and add that, while it is not likely, it is possible, that the officials misinterpreted rule 6 as restricting the right to obtain witnesses which the petitioner desired to produce; or rule 7, commented on in *United States vs. Sing Tuck*, 194 U. S. 161, 169, 170, 48 L. Ed. 917, 921, 24 Sup. Ct. Rep. 621, as giving them some control or choice as to the witnesses to be heard. But, unless and until it is proved to the satisfaction of the judge that a hearing properly so called was denied, the merits of the case are not open, and, we may add, the denial of a hearing cannot be established by proving that the decision was wrong."

In this case there is no allegation or proof whatsoever tending to show that the alien was not given a fair hearing in this matter, and the Secretary's ruling must prevail. The allegation that he is a domiciled alien does not take his case out from under the reasoning of those cases, for in each of the cases I have cited the alien claimed to be a citizen of the United States.

With much stronger force would the same reasoning apply to the alien claiming domicile.

The reasoning in these cases is not confined to the Chinese Exclusion Act, but is likewise applicable to cases arising under the Immigration Act.

*United States vs. Low Wah Suey*, 225 U. S. 460.

The terms of the Immigration Act under which this alien was ordered deported provides:

“Sec. 6. That the decision of the Board of Special Inquiry hereinafter provided for, based upon the certificate of the examining medical officer, shall be final as to rejection of aliens afflicted with tuberculosis or with a loathsome or dangerous, contagious disease or with any mental or physical disability which would bring such aliens within any of the classes excluded from admission into the United States under section 2 of this Act.”

Section 25 is the matter referred to in section 10, which section, after providing for the appointment of boards of special inquiry, is as follows:

“Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported. All hearings before boards shall be separate and apart from the public, but the said boards shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them; and the decision of any two members of a board shall prevail, but either the alien or any dissenting member of the said board may appeal through the Commissioner of Immigration at the port of arrival and the Commissioner-General of Immigration to the Secretary of Commerce and Labor, and the taking of such appeal



shall operate to stay any action in regard to the final disposal of any alien whose case is so appealed until the receipt by the Commissioner of Immigration at the port of arrival of such decision, which shall be rendered solely upon the evidence adduced before the Board of Special Inquiry; *provided*, that in every case where an alien is excluded from admission into the United States, under any law or treaty now existing or hereafter made, the decision of the appropriate immigration officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of Commerce and Labor; but nothing in this section shall be construed to admit of any appeal in the case of an alien rejected as provided for in section ten of this Act."

It thus appears that the order of the Board of Special Inquiry excluding the alien, based upon the medical certificate that the alien was suffering with a dangerous, contagious disease, is final and the Court has no power nor authority to review its decision.

The contention of the alien that he domiciled in the United States and therefore not subject to the immigration laws has been decided adversely by the Supreme Court.

*Anna Lapina vs. William Williams*, Commissioner of Immigration, opinion by Justice Whitney, rendered January 5, 1914. Advance Sheets Lawyers' Edition, Feb. 14, 1914, page 196.

The transcript (Tr. ) affirmatively shows that the alien was offered hospital treatment and refused the same, thereby not complying with Immigration rule 19 for the admission of aliens. Not having exhausted



his remedy in the department, he is not entitled to apply to the courts.

*United States vs. Sing Tuck*, 194 U. S. 168;  
*United States vs. Jew Toy*, 198 U. S. 1043;  
*Eiku vs. United States*, 142 U. S. 651.

SECOND: THAT UPON THE EVIDENCE PRESENTED TO THE BOARD OF SPECIAL INQUIRY ITS ORDER EXCLUDING THE ALIEN FROM ADMISSION TO THE UNITED STATES WAS PROPER.

Without waiving in any way the position hereinbefore taken, we contend that the alien should be deported on the record made out before the Board of Special Inquiry. The alien although domiciled in the United States, when he has left the same and presents himself for readmission to the United States is in the same position as any other alien who may never have been in the United States before.

*Anna Lapina vs. William Williams*, Commissioner of Immigration, Advance Sheets Lawyers' Edition, Feb. 1, 1914, page 196.

The alien was suffering from a loathesome, dangerous, contagious disease, to wit, trachoma, as is shown by the medical certificate of Dr. Trotter of the Public Health and Marine Hospital Service at Honolulu and having refused medical treatment offered him under rule 19, of the Immigration Rules and Regulations, is subject to deportation and should be refused admission under sections 2, 10 and 25 of the Immigration Act, which excluded aliens afflicted with tubercu-

losis or with a loathsome or dangerous contagious disease.

We contend that this case should be reversed and the alien remanded to the custody of the Immigration Inspector for deportation.

Respectfully submitted,

JOHN W. PRESTON,  
United States Attorney,

EARL H. PIER,  
Special Assistant to United States Attorney,  
Attorneys for Appellant.